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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.39 of 2004

Commissioner of Income-tax,
Chennai - IX ..Appellant

Vs

M/s.Abdul Rahman Industries,
Chennai-600 003. ..Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, 'C' Bench dated 16.07.2003 in I.T.A. No.803/Mds/98 for the assessment year 1993-94 (ITA NO. 202/96-97 DATED 15.5.1997 on the file of the Commissioner of Income-Tax (Appeals) II, Chennai against G.I.No. 1310-A, dated 29.3.1996 on the file of the Assistant Commissioner of Income-Tax, City Circle VII, (1), Chennai).

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.J.Balachander

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.

This appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 in I.T.A. No.803/Mds/98 passed by the Income Tax Appellate Tribunal, Chennai, 'C' Bench. On 03.02.2004, this Court admitted this appeal and formulated the following substantial question of law:

> "Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to deduction under Section 80 HHC in respect of Rs.9,59,197/- being unclaimed balances written back in the profit and loss account relating to the assessment year 1993-1994?"

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2. The brief facts leading to the above questions of law are as under:

The assessee is a firm engaged in the business of manufacture of shoes and tannery and also export sales of shoe uppers. The relevant assessment year is 1993-94 and the corresponding accounting year ended on 31.03.1993. The assessee filed Return of income on 15.12.1994 admitting the total income as nil. The Return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short). The assessee did not furnish Form 10CCAC along with the Return of income and hence the claim of the assessee firm for deduction under Section 80HHC of the Act, was rejected. Later the total income as per assessment under Section 143(1)(a) of the Act was determined at Rs.10,89,460/-. Subsequently, the matter was taken up for scrutiny with the prior approval of the Deputy Commissioner. Notice under Section 143(2) of the Act was issued to the assessee and the assessment was completed under Section 143(3) of the Act, after making certain additions. While completing the assessment, the Assessing Officer treated the sum of Rs.9,59,197/- as income under the head "other sources" and also computed the income as under:

"Profit as per Profit & Loss A/c		10,85,971
Add: Income tax paid for 90-91 disallowed		3,489
		10,89,460
Less: Sundry Credit Balances Written Back to be treated as income under the head 'Other Sources' as discussed in para 4 above		9,59,197
		1,30,263
Less: Deduction u/s 80HHC		1,30,263
Income from Business		Nil
Add: Income from Other Sources		9,59,197
Total Income		9,59,197 "

Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) dismissed the appeal and confirmed the order of the Assessing Officer. Aggrieved by the order, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal and held that the income should be treated under the head "business" and on this basis, the assessee is entitled to the benefit under Section 80HHC of the act.

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3. Learned Standing Counsel appearing for the Revenue submitted that, since the assessee did not produce any details regarding the nature of "Sundry Credit Balances Written Back", the Assessing Officer is right in treating the said amount as income under the head "Other Sources" and consequently, the assessee is also not entitled to relief under Section 80HHC of the Act.

4. Learned counsel appearing for the assessee submitted that the authorities below failed to understand the fact that the Sundry Credit Balances were only out of the business income and expenditure and hence the same should be assessed only under the head "business".

5. Heard the counsel. In the present case, the assessee rightly offered the sum of Rs.9,59,197/- as income for assessment which is not in dispute. In the case of Commissioner of Income-tax Vs. T.V.Sundaram Iyengar and Sons Ltd. reported in 222 ITR 344, the Supreme Court considered the similar issue and taken a view that, when the assessee himself transferred the amount from the credit balances standing in favour of the customers of the company to the profit and loss account of the company, the same is taxable as income of the assessee. There is no dispute regarding the taxability of the receipt. The only dispute is, how the said amount should be assessed - whether the said amount should be assessed under the head "Income from business" or under the head "Income from other sources". There were credits appearing in the books on the basis of purchase of items from various suppliers and these suppliers were not paid. These unclaimed credit balances were brought to the Profit and Loss Account and the same had emanated from trading transaction only. There is a finding given by the Tribunal that the said transaction is very much connected or closely linked with the assessee's business activities. The receipt had arisen only out of ordinary trading transaction and hence it was rightly assessed under the head "business". Therefore, we are of the view that the reasons given by the Tribunal are based on valid materials and evidence and hence we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

6. Under the circumstances, we are of the view that the Tribunal is right in holding that the income should be assessed under the head "business" and also on this basis, the assessee is entitled to the benefit under Section 80HHC of the Act. Hence, we answer the question of law in favour of the assessee and against the Revenue and accordingly, the tax case is dismissed. No costs.

km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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TO

1. THE ASSISTANT REGISTRAR
INCOME-TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN, III FLOOR
BESANT NAGAR, CHENNAI-90

2. THE COMMISSIONER OF INCOME-TAX
(CHENNAI)-IX, CHENNAI

3. THE COMMISSIONER OF INCOME-TAX
(APPEALS)-II, CHENNAI

4. THE ASSISTANT COMMISSIONER OF
INCOME TAX, CITY CIRCLE VII(1),
CHENNAI

1 CC TO MR.J. BALACHANDER, ADVOCATE SR NO 61714

Tax Case (Appeal) No.
39 of 2004

JRG(CO)

BP/27.12 12.12.2006

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